

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF CHANGE APPLICATION)
)
NUMBER 51-7115 (a21181))

MEMORANDUM DECISION

Change Application Number 51-7115 (a21181), in the names of Indianola Irrigation Company and Terrell W. and Elizabeth B. Pack, was filed on May 19, 1997, to change the point of diversion, place of use, and nature of use of 1.0 acre-foot of water. Heretofore, the water has been diverted from Clear, Rock and Thistle Creeks at the following points located: (1) North 830 feet and West 940 feet from the E $\frac{1}{4}$ Corner of Section 34; (2) South 520 feet and East 1125 feet from the W $\frac{1}{4}$ Corner of Section 35, T11S; (3) North 850 feet and East 20 feet from the W $\frac{1}{4}$ Corner; (4) South 360 feet and East 990 feet from the N $\frac{1}{4}$ Corner; (5) North 700 feet and East 30 feet from the W $\frac{1}{4}$ Corner of Section 3; (6) South 1760 feet and East 260 feet; (7) South 1670 feet and West 1000 feet from the N $\frac{1}{4}$ Corner; (8) North 900 feet and East 400 feet from the W $\frac{1}{4}$ Corner; (9) South 1680 feet and East 30 feet from the NW Corner of Section 4; (10) North 165 feet and West 900 feet; (11) North 100 feet and West 1520 feet from the E $\frac{1}{4}$ Corner; (12) North 1100 feet and East 1450 feet from the W $\frac{1}{4}$ Corner of Section 5, T12S, R4E, SLB&M. The water has been used for the irrigation of 0.25 acre from April 1 to October 31 in the Section 34; Section 35, T11S; Sections 3; 4; 5; 8; 9; 10; 16; and 21, T12S, R4E, SLB&M.

Hereafter, it is proposed to divert 1.0 acre-foot of water from a 6-inch diameter well, 300 feet deep, located South 2670 feet and West 965 feet from the NE Corner of Section 15, T12S, R4E, SLB&M. It is proposed to use the water for the irrigation of 0.25 acres from April 1 to October 31 in Section 15, T12S, R4E, SLB&M.

The application was advertised in the Mt. Pleasant Pyramid on May 27, 1998, and June 3, 1998, and was protested by BirdsEye Landowners Association. In the written protest it is stated that the administration of the irrigation company on water that is to be released has not been accomplished in the past and does not expect that it would be done for this change application, the applicant is transferring water from an unreliable surface source to a reliable underground source, and vested water rights will be impaired. It has been requested that a river commissioner be appointed.

The State Engineer has reviewed the change application, the protest, and the geohydrology of the area and notes that if land is taken out of production for this change application, the historically used water in the irrigation company should then be available to recharge the groundwater. The State Engineer will direct the irrigation company annually on how much water is to be released. The irrigation company shall release annually to the natural channel of Thistle Creek the amount of water directed by the State Engineer. Records of the releases should be made available to the State Engineer or his representative upon request.

In evaluating the various elements of the underlying rights, it is not the intention of the State Engineer to adjudicate the extent of these rights, rather to provide sufficient definition of the rights to assure that other vested rights are not impaired by the change and no enlargement occurs. If, in a subsequent action, the court adjudicates that this right is entitled to either more or less water, the State Engineer will adjust the figures accordingly.

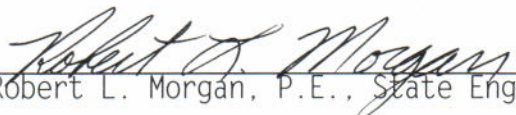
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It is, therefore, **ORDERED** and Application Number 51-7115 (a21181) is hereby **APPROVED** subject to prior rights and the following conditions:

1. This application is limited to the total diversion of 1.0 acre-foot annually.
2. The State Engineer will annually determine the total amount of irrigation company water that has had change applications filed on it, calculate the amount of water that has been available to downstream users, and direct Indianola Irrigation Company of the amount of water that is required to be released to the downstream users. Records of the releases shall be available to the State Engineer or his representative upon request.
3. The Indianola Irrigation Company shall reduce the amount of land being irrigated by 0.25 acre. Upon submittal of proof of diversion and use of water, in addition to all other information required at that time, the applicants shall provide evidence that the land has been taken out of active irrigation and that the water has been released.

This Decision is subject to the provisions of Rule R655-6-17 of the Division of Water Rights and to Sections 63-46b-13 and 73-3-14 of the Utah Code Annotated, 1953, which provide for filing either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Decision. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this Decision, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

Dated this 2nd day of October, 1998.


Robert L. Morgan, P.E., State Engineer

RLM:JER:et

Mailed a copy of the foregoing Memorandum Decision this 2nd day of October, 1998, to:

Indianola Irrigation Co.
c/o Norma Bigler (Sec.)
Star Route, Box 375
Fairview, UT 84629

Terrell W. and Elizabeth B. Pack
2603 West 10370 South
South Jordan, UT 84065

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BirdsEye Landowners Association
c/o J. Craig Smith
1100 Eagle Gate Tower
60 East South Temple
Salt Lake City, UT 84111

Lee Sim
Assistant State Engineer for Distribution

BY: Eileen Tooke
Eileen Tooke, Secretary